



Attachment E
Original Rule Proposal Developed from the
1995 US Army Corps of Engineers Stream Protection Guidelines

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 40—Land Reclamation Commission
Chapter 10—Permit and Performance Requirements for
Industrial Mineral Open Pit and In-Stream Sand and
Gravel Operations

PROPOSED AMENDMENT

10 CSR 40-10.020 Permit Application Requirements. The commission is amending subsection (2)(D). The forms that follow this rule in the *Code of State Regulations* are being deleted.

PURPOSE: This rule is being amended in order to add requirements to the permit applications for in-stream sand and gravel mining operations that will comply with standards designed to protect the stream environment and adjacent properties from damage.

(2) As required by section 444.772, RSMo, an applicant shall provide a complete application package submitted which includes the following:

(D) A plan of operation and reclamation which meets the requirements of 444.760—444.790, RSMo.

1. The operation plan for surface mine operators shall include:

A. A brief description of topsoil availability, removal and storage as outlined in 10 CSR 40-10.050(6);

B. A brief description and location of spoil placement and disposal;

C. A brief description of handling of acid materials, if applicable; and

D. A brief description of the location and arrangement of the pit if not delineated clearly on the map submitted with the application.

2. All applications shall contain a reclamation and operation plan for the lands and water within the proposed permit area. 3. The reclamation plan shall include, at a minimum:

A. A list of species used for reclamation and the seeding/planting rates[:];

B. Methods and timing of seeding/planting;

C. If required by the commission, references to support revegetation methods;

D. A brief description of the grading, topsoiling and revegetation schedules as outlined in 10 CSR 40-10.050(10); and

E. The land use that area is to be reclaimed to and the acreage of each.

4. In-stream operators must describe what measures will be taken to minimize impacts on the stream environment, that is, *[where possible, confining active operations to gravel bars rather than in flowing water, restricting haul roads through flowing water and restricting damage to stream banks or bank vegetation to the minimum required to transport material out.]* **how they will follow requirements of 10 CSR 40-10.050(13)(D).**

5. The applicant may provide either a short-term or long-term plan for operations and reclamation. A short-term plan shall describe, at a minimum, the activities required by the operation and reclamation plan outlined in this subsection, which will occur over the one (1)-year term of the permit. A long-term plan shall describe, at a minimum, the activities required by the operation and reclamation plan outlined in this subsection which will occur over more than

one (1) year. Permits having long-term operation plans will be issued for one (1)-year terms, except that, upon renewal, the applicant is not required to resubmit an operation plan, provided that the operations will continue to be conducted in the manner originally proposed. Also, the operator only must acquire a permit for the portion of the area included in the long-term plan, which will be affected over the upcoming one (1)-year term of the permit. But, in no instance shall the operator affect any area outside of the area included in the current approved permit;

AUTHORITY: sections 444.767, [RSMo Supp. 1993,] 444.772, [RSMo Supp. 1992] and 444.784, RSMo [Supp. 1990] 2000. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994. Amended: Filed Aug. 15, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Natural Resources, Land Reclamation Program, Larry Coen, Staff Director, PO Box 176, Jefferson City, MO 65102, (573) 751-4041. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

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PROPOSED AMENDMENT

10 CSR 40-10.050 Performance Requirements. The commission is adding a new subsection (13)(D).

PURPOSE: This rule is being amended in order to require mining operations for in-stream sand and gravel mining operations to comply with standards designed to protect the stream environment and adjacent properties from damage.

(13) Flood Plain.

(D) Operations that conduct sand and/or gravel removal within the stream banks must comply with the following requirements:

1. The following requirements are designed to protect water quality while allowing for the excavation of sand and gravel from riparian environments. The program may establish site specific guidelines to address conditions that may occur at individual locations.

2. Excavation of sand or gravel deposits should be limited to deposits in unconsolidated areas containing primarily smaller material (at least eighty-five percent (85%) of the material is less than three inches (3") in diameter) that is loosely packed and contains no woody perennial vegetation greater than one and one-half inches (1 1/2") in diameter, measured at breast height four and one-half feet (4.5').

3. An undisturbed buffer of twenty feet (20') should be maintained between the removal area and the water line at the time of excavation, and between the removal area and bank vegetation greater than one and one-half inches (1 1/2") in diameter, measured at breast height. Sand and gravel removal for personal use only should maintain an undisturbed buffer of ten feet (10') in the areas specified in this condition. Width of buffer areas may be modified after an on-site visit determines that a smaller width buffer area would not significantly impact the biological, physical, or chemical integrity of the water resource.

4. An undisturbed buffer of twenty-five feet (25') wide should be maintained in an undisturbed condition landward of the high bank for the length of the gravel removal site. Disturbed areas in this riparian zone should be limited to maintained access road(s) for ingress and egress only. No clearing within this riparian area is authorized in association with work authorized by this permit.

5. Sand or gravel should not be excavated below water elevation at the time of removal. If the stream is dry at the time of excavation, excavation should not occur deeper than the lowest undisturbed elevation of the stream bottom adjacent to the site.

6. Water conveyance areas within the channel should not be relocated, straightened, cut-off, shortened, widened, or otherwise modified. A "water conveyance area within the channel" is defined as that area between the high banks of the creek where water is

flowing, or in the case of a dry stream, where water would flow after a rain event as indicated by a defined stream channel.

7. Within thirty (30) days of the removal of excavation equipment from the site, streambank areas disturbed by the removal operation should be revegetated or otherwise protected from erosion. For long-term operations (longer than thirty (30) days) or for sites that will be periodically revisited as gravel is deposited, access points should be appropriately constructed and maintained such that stream banks and access roads are protected from erosion.

8. Any aggregate, fines, or oversized material removed from the site should be placed in an upland, non-wetland site that has been approved by the landowner. No material, including oversized material, that results from excavation activity may be stockpiled or otherwise placed into flowing water or placed against streambanks as bank stabilization.

9. All sand or gravel washing, gravel crushing, and gravel sorting should be conducted above the high bank, in a non-wetland area and away from areas that flood, such that gravel, silt, and wash water that is warm, stagnant, or contains silty material cannot enter the stream or any wetland. All fines resulting from the sorting operation should be captured in a transport truck or other suitable container and removed from the sorting location to a suitable disposal site the same day that the sorting occurs. All sorted aggregate should be removed from the gravel bar at the end of each working day, with the exception of oversized material that will be spread out in the excavation area following project completion.

10. When section 404 of the Federal Clean Water Act applies to a sand and gravel removal operation, spawning season restrictions should be followed.

11. Vehicles and other equipment should be limited to removal sites and existing crossings. Streams should be crossed perpendicular to the direction of the stream. Use of off-road vehicles in streams is also regulated under Missouri state law (section 304.013, RSMo).

12. Fuel, oil and other wastes and equipment containing such wastes should not be stored or released at any location between the high banks or in a manner that would enter the stream channel. Such materials should be disposed of at authorized locations.

13. Sand and gravel operations may require a permit for storm water runoff and/or gravel washing. Contact the appropriate Department of Natural Resources, Regional Office, for information.

14. In-stream sand and gravel operations are prohibited from those waters listed as "Outstanding State Resource Waters" or "Outstanding National Resource Waters" (10 CSR 20-7.031).

15. If any part of the authorized work is performed by a contractor or other party, these conditions should be discussed with the contractor or party. A copy of these conditions should be given to the contractor or other party involved in the excavation activities.

16. Operators should consult with the Missouri Department of Conservation and the U.S. Fish and Wildlife Service as to the presence of state and federal threatened and endangered species in the stream reach in order to avoid jeopardizing the species' continued existence or destroying or adversely modifying the habitat of such species.

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